



Missouri Department of Natural Resources

MISSOURI CLEAN WATER COMMISSION MEETING

May 1, 2002

Holiday Inn South County Center, St. Louis, Missouri

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission
Janice Schnake Greene, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

Mike Alesandrini, RCGA, St. Louis, Missouri
Andrew Appelbaum, Department of Natural Resources, St. Louis, Missouri
Jim Belcher, Department of Natural Resources, Jefferson City, Missouri
Brian Brookshire, Department of Conservation, Jefferson City, Missouri
Larry Cooper, Four Seasons Lakesites, Lake Ozark, Missouri
Joseph R. Cordaro, Lake Saint Louis Community Association, Lake Saint Louis, Missouri
Ann Crawford, Department of Natural Resources, Jefferson City, Missouri
Cindy DiStefano, Department of Conservation, Columbia, Missouri
Steve Donatello, Laclede Gas Company, St. Louis, Missouri
Carol Eighmey, Petroleum Storage Tank Insurance Fund, Jefferson City, Missouri
Chris Erisman, Village of Theodosia, Joplin, Missouri
Herb Egoroff, Lake Saint Louis, Lake Saint Louis, Missouri
Rhonda Ferrett, Lake Saint Louis, Lake St. Louis, Missouri
Keith Forck, Department of Natural Resources, Jefferson City, Missouri
James Gasich, Lake Saint Louis Community Association, Lake Saint Louis, Missouri
Frank Hackmann, RCGA, St. Louis, Missouri
Bart Hager, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Cindy Hebenstreit, Missouri American Water Company, St. Louis, Missouri
John Hoagland, Missouri Rural Water Association, Ashland, Missouri
Jim Hull, Director of Staff, Missouri Clean Water Commission
Neal Kalishman, Boulder Development Corporation, St. Louis, Missouri
Richard J. Laux, Department of Natural Resources, Jefferson City, Missouri
Bruce Litzsinger, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Glen McNabb, Village of Theodosia, Theodosia, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Roger Morse, Missouri Water Well Association, St. Louis, Missouri
Paul E. Mueller, Department of Natural Resources, St. Louis, Missouri
Deborah Neff, Assistant Attorney General, Jefferson City, Missouri

Richard Nussbaum, Department of Natural Resources, Jefferson City, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
Charles L. Raab, City of Kansas City, Kansas City, Missouri
Joy Reven, Department of Natural Resources, Jefferson City, Missouri
Kurt Riebeling, Department of Natural Resources, St. Louis, Missouri
Lane Roberts, Four Seasons, St. Louis, Missouri
Cory Ridenhour, Missouri Forest Products Association, Jefferson City, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
Carrie Schulte, Department of Natural Resources, Jefferson City, Missouri
David Shanks, Boeing, St. Louis, Missouri
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri
Tom Siedhoff, REGFORM (TESCO), St. Louis, Missouri
Tom Siegel, Department of Natural Resources, St. Louis, Missouri
Shawn Singer, Department of Natural Resources, Jefferson City, Missouri
Jeff Snyder, Delta Environmental Consultants, Inc., St. Louis, Missouri
Julianne Stone, Department of Natural Resources Urban Outreach, St. Louis, Missouri
Steve Sturgess, Department of Natural Resources, Rolla, Missouri
Scott B. Totten, Department of Natural Resources, Jefferson City, Missouri
Diane Waidelich, Secretary, Missouri Clean Water Commission
Roger Walker, Armstrong Teasdale, St. Louis, Missouri
Robert Williamson, Kansas City Water Services, Kansas City, Missouri

Chairman Herrmann called the meeting to order at approximately 9:10 a.m. and introduced Vice-Chairman Minton, Commissioners Kelly, Greene, Perry; Deborah Neff, Assistant Attorney General; and Diane Waidelich, Secretary.

Commissioner Hegi was absent from the meeting.

ADMINISTRATIVE MATTERS

Director of Staff

Scott Totten, director of the Water Protection and Soil Conservation Division, announced that Jim Hull, the former director of the Solid Waste Management Program, has been selected to be the next director of the Water Pollution Control Program. He informed the commission Mr. Hull has background in solid and hazardous waste management and noted many issues he has dealt with relate to water pollution control activities. He requested commission concurrence of Mr. Hull's appointment as Director of Staff for the Missouri Clean Water Commission.

Commissioner Minton moved to **confirm the appointment of Jim Hull as the commission's Director of Staff**; seconded by Commissioner Kelly and unanimously passed.

Mr. Hull thanked Mr. Totten for his remarks and stated he believes he will bring some common sense and the ability to work with people to this position.

Final Action on Proposed Rule 10 CSR 20-7.040 Comprehensive Risk-Based Groundwater Remediation Rule

Mr. Totten introduced several staff who are members of the internal workgroup that developed the proposed rule. The comment period on this proposed rule closed April 2, 2002. Mr. Totten reported four meetings on the proposed rule were held statewide in March 2002 and were well attended. Notes from these meetings were provided to the commission members. Comments received after the March 19, 2002 public hearing were also provided to the commission members. Department staff were also provided the opportunity to review the proposed rule.

Mr. Totten summarized the major comments and concerns received on the proposed rule. 1. The concept of the urban groundwater management zone appears to be useful, although there are many concerns about how the zones would be established, such as criteria that are used to define the zone, the amount of characterization to be conducted for the zone, and the timing of the characterization, assessment and other work related to the groundwater management zone. 2. Comments were received that urban groundwater management zones can address major redevelopment issues and protect human health and the environment. Many people did not feel the present form of the rule would facilitate such redevelopment. 3. There were also concerns about additional contamination that may occur if such a zone were designated. 4. Other comments related to the use of tiered approaches with look-up tables such as other guidance, or models from other states having a program for groundwater cleanup. 5. There were comments on whether the current statute provides sufficient authority, boundaries and direction as were included in the draft rule. 6. A comment was received that there is no apparent appeal process in the regulation in case decisions were made in the course of application and implementation of such a risk-based cleanup should either the applicant or neighbors of the sites have questions or concerns that they need to bring forth.

Mr. Totten stated the main reaction to the proposed rule is that the draft is a good start, but that it still needs considerable work to result in a productive procedure. He continued given the apparent need to make substantial changes to the proposed rule, the department will not recommend that the commission proceed to adopt the rule at this time. At this point, the department would like to take advantage of the offers from outside parties to meet and revise the draft. Many of those who offered comments also offered to assist in further discussions and development of a revised rule. Mr. Totten noted they have agreed to begin their efforts after the commission adjourns today. Individuals that have offered to assist include members of the RCGA, REGFORM, Coalition for the Environment, Sierra Club, Petroleum Storage Tank Insurance Board, Well Installation Board, and probably others. Mr. Totten continued that representation is also needed from the Hazardous Waste Commission and possibly the Safe Drinking Water Commission and the Clean Water Commission.

Mr. Totten reported a proposed staff directive on the groundwater rule would direct staff to:

1. Convene a committee of interested stakeholders to meet within the next 20 days to begin development of an alternative proposal in place of this draft rule.
2. The stakeholders committee shall provide a final report on its work to the Clean Water Commission within four months and shall update the commission at subsequent commission meetings. If the report includes a new draft of a proposed rule, the report shall indicate what issues remain for the committee to consider and the timeframe in which these should be expected to be completed.
3. The stakeholders committee is expected to be dissolved upon presentation of a revised proposed rule as described in these two items.
4. The stakeholders committee shall, at a minimum, consider the following eight items that seem to be the issues raised in the comments.
 - a. The criteria that should be used in designating an urban groundwater zone, if such zone designation is a component of the proposal.
 - b. How such zones can be established and managed so that they encourage redevelopment of properties.
 - c. How the zones could be defined or otherwise limited to urban areas because many of the comments were concerned about rural areas of the state that depend a great deal upon groundwater resources for both public and private water supplies.
 - d. How the proposed rule would address new contamination in these zones.
 - e. Do other states have programs that Missouri could use as a model? Illinois and others have groundwater management zone models that could be looked to.
 - f. How will the proposed rule consider potential future uses of groundwater in establishing cleanup standards?
 - g. Is it feasible to include in the rule look-up tables for specific contaminant cleanup values?
 - h. Does the current statutory authority provide a platform for the kind of cleanup desired by municipalities, businesses and industries?
5. The department shall advise the commission, either as part of the committee report or independently, of any programmatic, budgetary, legal or other concerns that are relevant to the draft rule.

Mr. Totten recommended withdrawal of the proposed rule and approval of the staff directive to reconvene the group of stakeholders to develop a Comprehensive Risk-Based Groundwater Remediation Rule.

Responding to Commissioner Perry's questions, Mr. Totten stated he is spearheading this effort. From discussions with the stakeholders, it appears there is a lot of agreement on the objectives. The first meeting of the stakeholders will be after today's commission meeting.

Commissioner Greene moved to **withdraw Proposed Rule 10 CSR 20-7.040 Comprehensive Risk-Based Groundwater Remediation Rule and to direct staff to develop an alternative rule as per the staff directive**; seconded by Commissioner Perry and unanimously passed.

Theodosia Grant Increase Request

Joy Reven, Water Pollution Control Program Financial Services Section, reported the Village of Theodosia has requested a grant increase in the amount of \$198,000. The engineer's estimate for the treatment system was \$510,000. Five bids were received with the low bid being \$523,500. The engineer's estimate for the collection system was \$2,379,375. Four bids were received with the low bid being \$2,646,423.85.

Ms. Reven reported the State Hardship Grant Program is patterned after the Federal Hardship Grant Program. One project was funded with Federal Hardship Grant money. In 1998 voters changed the way water pollution control bonds are received and the State Hardship Grant Program was begun to meet the needs of these communities. Theodosia is the first applicant for this money and will be the first State Hardship grant. The project was carried over in the 2001 Intended Use Plan (IUP) and reapplied for in the 2003 IUP. In order for a community to meet the hardship requirements, they have to have a population of less than 3,000 with a per capita income not exceeding 80% of the national per capita income. The unemployment rate has to be a full point higher than the national unemployment rate. This money will fund the eligible cost of the project after the community reaches two percent of their median household income in their user rate.

Ms. Reven stated the annual operating, maintenance and replacement cost for this system will be \$31,950. After deducting this from the system revenues, there was only enough money to loan them \$380,000 that they could pay back. Closing of this loan is scheduled for May 6 if the commission agrees to the increase request. There will be a balance of approximately \$115,000 remaining if this increase is approved. Ms. Reven requested approval of this increase request.

Chairman Herrmann discussed cost reducing avenues available during design, that regulations do allow, to keep the cost down for very small communities. He noted this

project did not take advantage of any of those cost reducing options. With this increase, the total cost per individual is raised to \$11,073.80 which is hefty for a very small project. \$154,125 is classified in the bid tabulation as lateral construction, which is not eligible. Chairman Herrmann asked why the house laterals were included and why some cost reducing measures were not included in the project's design.

Ms. Reven replied the laterals are listed but the state grant and loan will not participate in that. Most of the residences are low to moderate income and the project is partially funded through a Community Development Block Grant that will pay the cost of those laterals. The city will pay the remaining cost as part of its share.

Shawn Singer, Water Pollution Control Program Engineering Section, reported he used the Iowa standards to review the force mains, which allows a two-inch minimum force main to allow for future expansion in the system.

Chairman Herrmann stated the 10 States Standards and Missouri regulations say that a force main must be able to pass a three-inch sphere.

Mr. Singer replied these are step systems using septic tank effluent pumping systems so it is actually screened before it is pumped through the force main. The septic tank precedes the pumping station.

Chairman Herrmann stated there apparently was no consideration given to smaller than eight-inch diameter collector sewers.

Mr. Singer responded he did not consider this in his review.

Chairman Herrmann noted he understands Mr. Singer came in after the initial review and that is why he wanted to ask Mr. Clarkson if there is some consideration given to reasonable cost of a system.

Commissioner Minton noted there are 181 septic tanks and the total cost of the project is \$3,769,563 equating to over \$20,000 per septic tank. He asked if there aren't other alternatives by which these small communities can address waste treatment.

Mr. Singer stated the septic tank pumping stations serve more than one house.

Commissioner Minton replied he realizes that but the cost is \$20,000 per septic tank no matter how it's divided.

Commissioner Perry asked if only one-third of the septic tanks in Theodosia are actually not functioning properly.

Chris Erisman, Allgeier, Martin & Associates, replied a majority of the septic tanks in the community were failing.

Commissioner Perry voiced her concern about the high cost of annual maintenance.

Mr. Erisman replied this is covered in the user charge of about \$22 per month that goes for operation and maintenance plus the loan repayment.

Ms. Reven reported 188 connections times \$22.80 per month times 12 months is the income to the system. The city has to take from that income the cost of operating the system, which is estimated at \$31,000. The community had approximately \$19,000 remaining and the loan amount is \$380,000. They could use the balance of what the system took in to pay their share of this system, which is extremely expensive. Ms. Reven noted several years ago a grant was made to Merriam Woods. The collection system on this project came in at \$2.6 million and the Merriam Woods project of two years ago came in at \$5.285 for collection only. Ms. Reven noted the cost for collection in that area is phenomenal.

Chairman Herrmann stated he thought the conditions with Merriam Woods were considerably different. Merriam Woods was at the lower end of a watershed that was capable of taking flow from above. The project had considerable rock excavation. The bid tabulation for Theodosia shows no rock excavation.

Mr. Erisman replied all the rock excavation was unclassified on this job. Several alternatives were discussed for this project and everyone knew because of how much rock there is and because of the terrain the main cost would be opening the trench and excavating the rock. Mr. Erisman noted there is a lot of potential for growth because of the location on the lake.

Chairman Herrmann noted the history of Theodosia does not show much potential for growth.

Mr. Erisman responded there are subdivisions platted but the lots are empty because they are too small to put in septic systems. With the sewer system, there should be a considerable amount of growth.

Responding to Chairman Herrmann's question, Mr. Erisman stated the capacity of the plant is 61,000 gallons per day.

Commissioner Minton asked if the plant is sized to accommodate the growth.

Mr. Erisman stated they have accounted for some growth in the design. It will probably be around 20,000 to 25,000 gallons per day, which will allow for quite a bit of growth.

Chairman Herrmann noted the difference between the eight-inch and six-inch gravity sewer is \$18.80 per foot.

Mr. Erisman replied this is the outfall from the sewer plant and it will be in a common trench with a force main so the cost is skewed.

Commissioner Minton asked what other alternatives were considered and why this alternative was selected.

Mr. Erisman responded a lagoon system with land application did not work due to the terrain being extremely hilly. For the collection system, a pressurized system with individual pumps at each house was looked at but because of the cost of digging trenches in the area and the maintenance that would be required with 188 individual pumps, the community was not comfortable with the idea. It was decided to go with as much gravity as possible.

Commissioner Greene commented this terrain is extremely hilly and rocky. Septic systems are effective for a short period of time at best in this environment. Commissioner Greene continued this is a great opportunity to put in a sewer system for this area so that problems like those being seen on Table Rock can be avoided. Bull Shoals has pretty good water quality now and the sewage from these little towns needs to be handled in order to maintain that. Commissioner Greene noted the cost may be a hardship but the long-term results will be protecting the water resources.

Chairman Herrmann responded he does not argue with this but he has a problem with the cost of achieving this protection. He stated he is voicing this concern as direction to the engineering and financial staff that there are less expensive ways of accomplishing the same end, which are allowable under the regulations. If these are not taken advantage of, this is a disservice to others that may apply for a grant since the money only reaches so far. The more money that is spent on overdesigned projects, the less there is available for others. Chairman Herrmann noted he believes there are ways that this project could have been reduced but the project is already past that point.

Responding to Commissioner Perry's question, Ms. Reven stated the preconstruction conference is scheduled for next Monday if the increase request is approved.

Commissioner Perry asked if the project would be reduced by the amount of the increase request if the commission does not approve the increase.

Ms. Reven responded of the \$198,000, \$120,000 is contingency, which will be taken back if this project does not use it. Once the grant is awarded it can't be increased. The project would be short \$78,000 and bids could not be awarded next week. Ms. Reven noted there is nothing else that can be cut out of the project; it would have to be redesigned and rebid which is a lot more expensive than \$198,000.

Commissioner Minton noted he visited with Commissioner Hegi about this issue and they both have a concern that the project is overdesigned. He stated a question they both have is if this is the most cost-effective approach to providing waste treatment facilities for this community.

Mr. Erisman responded that a low-pressure system was looked at in the planning stages but the largest portion of cost was in the trenching and the rock excavation. With a low-pressure system, there are pumps at every residence.

Chairman Herrmann stated there is a pump at clusters of houses rather than at each house, which is essentially what the project has now.

Mr. Erisman noted it was decided not to go with the low-pressure system.

Commissioner Minton stated this is the safe way to go because the maximum amount of money is being spent. He noted the project has come too far and he does not intent to back out on the community but he is trying to send a message to staff that we need to be as prudent with these monies as is possible. If rock is the major cost, this should have been stated so the commission would not have questioned the project. Commissioner Minton noted \$20,000 per home appears to be a staggering amount to hook up a sewer line and he hoped every possible alternative to spending that kind of money was explored. He continued that high-pressure lines and pumps are expensive to maintain and they have got to have maintenance.

Mr. Erisman responded the pumps are not a conventional lift station pump but an effluent type pump that does not have solids. They are inexpensive and low horsepower which reduced cost and maintenance cost.

Commissioner Minton noted they range higher than \$30,000.

Mr. Erisman stated a lot of that cost was for a tank that settles out the solids from which an effluent is pumped. The long-term cost of maintenance is a lot less than any type of conventional grinder type pump.

Responding to Commissioner Perry's question, Mr. Erisman stated the growth is projected for 20 years and that is what the plant is designed for.

Glen McNabb, Chairman of the Village of Theodosia, stated one of the big costs of the system is that Highway 160 divides the town and there will be three highway crossings which is very expensive. Mr. McNabb noted people are more willing to build in the community when they hear about the sewer system.

Mr. Erisman stated the growth from 1970 to 1980 was 54.5% and 1980 to 1990 was 15.2%.

Commissioner Perry asked if the nearby town has a wastewater treatment system.

Mr. McNabb noted this area is a bigger area by far than Theodosia with only 35 homes, which are on septic systems.

Commissioner Perry asked if focusing on one area and spending an exorbitant amount of money is setting a precedent. She continued there are probably a lot of similar communities in Ozark County and to the west. She asked if Theodosia is to be funded just because the commission wasn't watchful of allowing this much to be spent on one particular project and if the big picture items are not being looked at in order to put in the perfect wastewater treatment system for a small community.

Commissioner Greene noted Theodosia is going to pay for this so the commission is not giving them anything.

Commissioner Perry asked what the citizens feel about paying this much just for sewer.

Mr. McNabb responded the residents realize it's high but they see the need and the majority voted for it.

Commissioner Perry asked if it was a close vote.

Ms. Reven responded the vote was 53 yes and 33 no.

Commissioner Perry asked if anyone is being forced out of their home because of this project.

Mr. McNabb stated there are over 500 undeveloped lots. In the subdivisions that are developed, the homes are spread out and it would be hard to hook more than one at a time to a collection system.

Commissioner Greene noted if she was a member of DNR's staff and a citizen of Theodosia, she would be really upset about the insinuation that the most expensive project is being sought out and cost cutting measures are not being considered. She stated the area is unique and she does not believe people are out to spend as much money as they can. The citizens of Theodosia and staff are trying to get the best project they can get for the best price. This is a unique Ozark environment with hills and the lake in the area. Commissioner Greene noted this was a big issue with Table Rock because of nutrient loads, which has affected tourism, and this is not wanted at Bull Shoals. She continued \$198,000 is being discussed today and \$2 million is already approved. This issue is discussed every time an increase request comes up and the message has been sent.

Commissioner Minton stated he does not believe that Theodosia is out to cheat the department nor is the department trying to waste money nor do engineers intentionally

overdesign a project. He continued it is the responsibility of the commission to protect the citizens of Theodosia and the department itself. If the cost can be trimmed by \$200,000 then it is the commission's responsibility to do so. Commissioner Minton commented the next time one of these projects comes before the commission, he will be more cautious to make sure that it does not cost \$20,000 to hook up a septic tank. He noted he will support Theodosia in any effort they make to maintain the quality of their environment but it is his responsibility to protect the taxpayers of the state. Commissioner Minton stated he thinks caution needs to be used to make sure a consultant designs what is required but does not overdesign.

Mr. Erisman noted he understands the commission's position and the consulting firm did look at options to cut costs for this project. This project goes back to 1996 with countless hours spent on a project in a very expensive part of the country to put in these systems.

Chairman Herrmann stated one of the last projects he worked on before he retired was a comparable sized town with comparable topography with no rock for a total cost of \$400,000. It was a combination pressure system and gravity system and the gravity system was a smaller diameter pipe. This is the basis for the questions about why six-inch collector sewers weren't used when there are obviously very few contributors to each collector sewer. Chairman Herrmann noted included in the total the commission has already agreed to is a 3.9 percent contingency cost, which totals \$121,464. This includes the collection laterals with a cost of \$154,125. He suggested granting the amount previously approved in the IUP and not the \$198,000 which would require doing some analysis of the need for the contingency cost in the preconstruction conference. With the collection laterals not being part of the approved construction cost under commission regulations, there should be ample room for negotiations to get this down to an amount not needing the \$198,000.

Ms. Reven reported a Community Development Block Grant funds the laterals for LMI residents while the city picks up the cost for non-LMI households. The cost of the laterals does not change the project cost.

Ann Crawford, Water Pollution Control Program Financial Services Section, stated the laterals were not included when staff figured the grant amount.

Chairman Herrmann stated if the \$154,125 is not taken out of the \$500,000 that means there is \$154,125 left for other items.

Commissioner Greene moved to **approve the grant increase request of \$198,000 for the Theodosia project as recommended by staff**; seconded by Commissioner Kelly and failed with the following vote: Commissioner Greene: Yes; Commissioner Kelly: Yes; Commissioner Minton: No; Commissioner Perry: No; Chairman Herrmann: No

Commissioner Minton moved to request Theodosia to review the cost of installation of the plant and that the \$198,000 increase request not be approved; seconded by Commissioner Perry.

Chairman Herrmann asked if the city would be required to report back to the commission.

Ms. Reven stated the city cannot award the bids without this money. The city cannot enter into a debt without having enough money to pay for it.

Ms. Crawford stated the Community Development Block Grant money for the laterals would be withdrawn if staff allows a change order after the contract is awarded.

Chairman Herrmann noted the Community Development Block Grant money is not for laterals.

Ms. Crawford responded Community Development Block Grant is paying for the LMI laterals.

Chairman Herrmann stated the Community Development Block Grant is a lump sum of \$500,000 where laterals are only \$154,000.

Ms. Crawford responded the laterals are part of the \$500,000 and the entire amount will be pulled.

Chairman Herrmann noted he disagrees with that.

Commissioner Minton asked if the contract has been awarded.

Ms. Reven responded the contract was to be awarded May 6.

Chairman Herrmann noted the preconstruction conference is the negotiating time.

Ms. Crawford responded the contractor cannot be negotiated with under our rules or the Community Development Block Grant rules. They will pull their funding if this occurs.

Chairman Herrmann stated the reason for taking unit price bids is for negotiating and so that reductions, increases, and so forth can occur.

Ms. Crawford replied the problem is not with staff but with the Community Development Block Grant money. This problem has been reviewed many times through the Missouri Water and Wastewater Review Committee.

Chairman Herrmann stated he has done this a few years back when Community Development Block Grant money was involved.

Commissioner Perry asked if the motion on the floor isn't redundant.

Commissioner Minton agreed that it was.

Commissioner Greene stated Theodosia cannot move forward with its project because they cannot award a bid.

Chairman Herrmann said they can award a bid under negotiation during the preconstruction conference.

Ms. Reven stated in the prebid conference often times these matters could be discussed but not preconstruction. The city has sent out an intent to award and the contractors are getting their bonds and are ready to sign their notice to proceed on Monday. They already have their bonds for this amount of a contract. If the city does not have enough money to enter into a contract, they cannot do it legally. Ms. Reven stated the city does not have enough money for the project without this increase.

Ms. Crawford commented that possibly an increase without a contingency could be done; there would then be no extra money if problems occurred.

Commissioner Minton stated if problems arose, the community could return to the commission who could evaluate the problems.

Ms. Reven stated the grant rule says that a grant can't be increased and that is why the contingency is included.

Chairman Herrmann noted construction cost is \$2,492,299, laterals \$154,125, wastewater treatment plant \$523,500 which is considerably above the \$200,000 that is the low bid.

Ms. Reven explained that the actual cost of the H. Epps Company bid was \$2,246,000. The three lower numbers are the deduct amounts.

Commissioner Minton withdrew his motion and Commissioner Perry withdrew her second.

Final Staff Recommendation on Highlandville Variance Request

Ms. Crawford reported the initial recommendation on this variance request was presented at the March 19 commission meeting. She explained this is for a variance to an existing rule to spend federal and state grant funds for these Special Infrastructure Grants. No comments were received during the comment period and Ms. Crawford requested final approval of the Highlandville Variance Request.

Commissioner Perry moved to **grant final approval to the Highlandville variance request as recommended by staff**; seconded by Commissioner Greene and unanimously passed.

Staff Recommendation on Seymour Variance Request

Ms. Crawford reported the City of Seymour has requested a variance that would enable the department to distribute their funds for construction engineering and the limit to the grant amount. She noted this is the same issue the other phosphorus communities have brought before the commission. Ms. Crawford requested preliminary approval of this variance request.

Commissioner Greene moved to **preliminarily approve the City of Seymour's variance request as recommended by staff**; seconded by Commissioner Perry and unanimously passed.

Commission Action on Matters to be Referred to the Office of the Attorney General

Field of Dreams Development

Kevin Mohammadi, Chief of the Water Pollution Control Program Enforcement Section, reported that Field of Dreams Development is a proposed 38-acre single family subdivision in Warren County where construction is performed in phases. A General Permit for land disturbance activities was issued on October 30, 2000. Since then, six department inspections have revealed a lack of soil erosion control devices and inadequate maintenance of the ones that were installed resulting in the issuance of three Notices of Violation. An unnamed tributary of the North Fork Charrette Creek has been adversely affected by the deposition of sediment from the run-off. The Field of Dreams Development is in violation of the Missouri Clean Water Law for violating conditions in the permit, causing pollution and violating the General Criteria for Water Quality Standards. Department staff has repeatedly attempted to resolve the noncompliance with the responsible party. However, to-date the issues still remain unresolved and it appears will remain that way. Mr. Mohammadi recommended referral of this matter to the Attorney General's Office for appropriate legal action.

Neal Kalishman, Vice-President and General Counsel for Boulder Development Corporation, stated that staff has not complied with 10 CSR 20-3.010(1)(E) by failing to provide information to Boulder Development Corporation. Mr. Kalishman described how the City of Warrenton is running sewer lines through the area to serve the southern part of the city.

Commissioner Greene asked where the creek is on the development.

Mr. Kalishman replied there might have been one at some time but there isn't now because the city has redeveloped the whole area. He provided pictures for the commission to view as

he explained the area. Mr. Kalishman stated they are making changes that the inspector requests. He noted the area being referred to does not maintain permanent flow or permanent pools and therefore does not contain protectable aquatic life. Mr. Kalishman described best storm water management techniques employed by Boulder Development at the site. He stated that the Water Quality Standards were not violated at any time. Mr. Kalishman noted even though notice has not been provided, they will begin the analysis with section (1)(B) that provides an administrative penalty shall not be imposed for minor violations. Mr. Kalishman noted he spoke to the inspector prior to today's meeting and he indicated that there are a few minor items remaining. Only as a last resort should a case be brought to the commission or the Attorney General for penalty determination. Mr. Kalishman noted violations were corrected in a timely fashion and did not cause environmental damage and inspection reports do not reflect that the deficiencies have been responded to. He stated this methodology is calculated to generate a file giving a false impression of noncompliance. He continued that Boulder has consistently taken the position that they are prepared to meet the demands of DNR and have a strong interest in controlling erosion and preventing pollution to sensitive resources. Mr. Kalishman informed the commission the City of Warrenton ordered Boulder to breach its detention basin because the city Public Works Commissioner was concerned that the board of aldermen would see it. After the breach, Boulder contacted the inspector and notified him what had occurred. The inspector then met with the City of Warrenton regarding this issue and Boulder then rebuilt the detention basin.

Mr. Kalishman discussed the matrix used in 10 CSR 20-3.010 to assess noncompliance. He stated there is no direct connection between the Field of Dreams site and a tributary of the North Fork Charrette Creek. Assuming outflow from Field of Dreams reaches the lake, any damage to the lake would be a direct result of the extensive adjacent land disturbance of the neighboring development and the City of Warrenton. Mr. Kalishman stated there is no human or environmental harm. Measures were implemented to respond to the inspector's observations as soon as possible after meeting with him. Alleged violations were not due to disregard for the law but due to changing conditions that rendered previously appropriate best management practices insufficient. Mr. Kalishman stated Boulder Development has taken a position of cooperating and complying and fully meet the test for not imposing administrative penalties since the violations are minor. He stated they welcome DNR working with them to improve storm water management and would appreciate assistance in continuing to achieve compliance as opposed to generating paper trails in an effort to set them up for an administrative penalty. Mr. Kalishman stated they work to comply and correct violations in a timely manner and create no harm since there is simply a discharge of rainwater into a nonsensitive environment. He asked that the matter be dismissed or the staff's recommendation for referral to the Attorney General's Office be denied with a further finding that Boulder Development falls within the provisions of 10 CSR 20-3.010(1)(B) that an administrative penalty is inappropriate.

Commissioner Perry asked if a demand for an administrative penalty has been made and if that is the only remaining issue.

Mr. Kalishman responded it has been made and it is the only issue that ever existed. He explained that is why he was adamant that achieving compliance has not been the issue but money has. Mr. Kalishman noted they look forward to working with staff in the future but that they are in compliance with commission rules.

Mr. Mohammadi informed the commission staff has repeatedly explained to Mr. Kalishman that administrative penalties are not being sought. Compliance and payment of a civil penalty are being sought for violations of the Missouri Clean Water Law. Mr. Mohammadi noted Mr. Kalishman has referenced Chapter 3 regulations, which relates to an Administrative Penalty Order. What is being sought is \$10,000 per day for violations of the Missouri Clean Water Law. Staff has offered Mr. Kalishman the opportunity to use the administrative penalty matrix to work out a settlement agreement. Mr. Kalishman has refused to enter into an agreement to pay a civil penalty. Mr. Mohammadi gave a chronological report of events at the site.

Responding to Commissioner Perry's question, Mr. Mohammadi explained an administrative order is very much like an abatement order. The order contains the violation, the amount of penalty, and it explains how the penalty amount was determined. Administrative orders like abatement orders are subject to appeal before the commission. The department is also allowed to seek a civil penalty where the entity does not have the right to appeal.

Commissioner Davis asked if the civil penalty being sought is for restitution for damages done as a result of discharges from the site.

Mr. Mohammadi explained a penalty is different than damages. Damages are sought if a fish kill occurs and the civil penalty is to act as a deterrent and to provide an incentive to the developer to spend time and money to comply with the law.

Responding to Commissioner Perry's question, Paul Mueller of the St. Louis Regional Office, stated the site is now in compliance.

Commissioner Perry asked if the best management practices that were needed at the site were explained when the permit was issued or if additional best management practices were imposed after the permit was issued.

Mr. Mueller responded the permit specified the best management practices that had to be implemented at the time it was issued. Some of the practices were completed on parts of the property but not the entire site. Mr. Mueller noted an April 8 site visit did show grass on the slopes and maintenance being done.

Commissioner Perry asked if the delays were in the logistics of getting things completed or items they thought they did not have to do until they were told.

Mr. Mueller replied all these issues were in the permit as well as recommendations for literature and professionals that can help with managing the property.

Mr. Kalishman stated the main issue is mulching and seeding of the slope. He continued the slope does not have to be mulched or seeded until 14 days after completion of excavation of the site. Kalishman stated they notified Mr. Mueller when items were completed and asked for further direction, which shows compliance and no harm.

Mr. Mueller replied the best management practices need to be ongoing throughout the whole development.

Commissioner Perry asked if this project would be categorized as lax in compliance throughout the project.

Mr. Mueller responded the project was slow in moving forward.

Mr. Kalishman noted when they began they added additional storm water basins as they started dealing with water coming off the site.

Mr. Mohammadi noted during the negotiation process to reach agreement on the amount of penalty, the entity's cooperation and amount of work completed is always factored in. No additional points have been assessed for recalcitrance or being habitual violators. Mr. Mohammadi stated this is clearly a liability issue.

Commissioner Perry asked if the reason the request for referral is being made is because there has not been an agreement as to the amount of civil penalties and if there have been negotiations that have failed.

Mr. Mohammadi replied staff has expended much time on this matter and the offer is very low.

Commissioner Perry asked if there is no resolution of this issue, wouldn't the administrative law forum be the means to resolve it.

Mr. Kalishman stated staff has chosen to dump the case on the Attorney General's Office because the Clean Water Commission isn't going to deal with it.

Commissioner Perry asked if this goes directly to civil court because this is not an appealable order.

Mr. Kalishman noted that is correct. He continued they were notified several weeks ago that if they did not settle that day, the matter would be directly referred to the Attorney General's Office.

Commissioner Perry asked if that can be done.

Mr. Mohammadi replied he is not sure what Mr. Kalishman is referring to.

Commissioner Perry stated if an impasse has been reached, what is the problem with going before a civil jury.

Mr. Kalishman replied that is why this matter will probably end up in civil court depending on what the Attorney General's Office chooses to do.

Commissioner Perry stated if the matter is not referred it would stay in limbo.

Mr. Kalishman noted he has asked for a motion to deny the request and find that they are in compliance.

Commissioner Perry noted there is a civil penalty matter.

Mr. Kalishman stated there is not. The commission does not have to worry about the civil penalty; staff is trying to go around the commission.

Commissioner Perry asked if any action of the commission will make any difference because the civil penalty is outside the commission's jurisdiction.

Mr. Kalishman responded staff is asking to take this out of the commission's jurisdiction by referring to the Attorney General's Office.

Commissioner Perry noted that's where the issue can be resolved.

Mr. Kalishman stated the commission has the option of saying this case fits within our rules and this is not the kind of case we want to see come before the commission because the issues are resolved and there is no harm.

Commissioner Minton noted a good faith effort has been made to address the issues but photographs do show that these efforts appeared to be wholly inadequate and poorly maintained.

Commissioner Minton moved to **refer Field of Dreams Development to the Attorney General's Office** for appropriate legal action; seconded by Commissioner Greene and unanimously passed.

Commissioner Kelly noted on the photographs of the Field of Dreams development there appeared to be a lot of erosion from the site adjacent to Mr. Kalishman's development. She asked if anyone has checked into this.

Mr. Mohammadi stated he will discuss that issue with Mr. Mueller.

Four Seasons Lakesites, Punta Piloto Development

On June 8, 2000 a fully executed Settlement Agreement was reached with Four Seasons Lakesites, Inc. for violations of the Missouri Clean Water Law and regulations at Grand Point and Eagles Cove Subdivisions in Lake Ozark. Mr. Mohammadi reported the violations at these developments included construction of a water contaminant source without a permit, operation of a water contaminant source without a permit, and violation of 10 CSR 20-6.030 Disposal of Wastewater in Residential Housing Developments. In the Agreement, Four Seasons Lakesites, Inc. agreed that for any present or future Four Seasons development within the State, Four Seasons would comply with all applicable provisions of the Missouri Clean Water Law and regulations, including the subdivision regulation.

On February 5, 2002, department staff performed surveillance of a new subdivision, Punta Piloto, being developed by Four Seasons Lakesites, Inc. Upon inspection of the development, staff observed that homes and portions of the sewer collection system were under construction. At the time of the inspection, Four Seasons Lakesites, Inc. had applied for a construction permit for the sewer collection system, however, the permit had not been issued. This action by Four Seasons constitutes construction of a sewer collection system without a permit and development of a residential housing development prior to approval of the method of sewage treatment and disposal. This also constitutes violations of the terms of the Settlement Agreement. Further violations of the Settlement Agreement include, failure to submit a required letter from the continuing authority stating that capacity will be available at the wastewater treatment facility to serve future homes, and construction of homes prior to obtaining a building permit from the Architectural Control Committee (ACC). According to the Settlement Agreement, the ACC would not issue building permits for new homes until the central sewer collection system is extended to the lot and the continuing authority has capacity to serve the new connection.

Mr. Mohammadi recommended referral of this matter to the Attorney General's Office.

Larry Cooper, General Manager of Four Seasons Lakesites, provided a map of the development and described how the project was developed. He explained the permit application was submitted but a letter regarding the continuing authority was not submitted. The department's response to the submittal went to their engineering firm who did not respond to the department's comments. The comments have now been responded to and the continuing authority issue addressed. Mr. Cooper commented that he is not aware of any harm being done by their project and he is not sure what they must do to get in compliance.

Commissioner Perry asked if the permit has been issued.

Mr. Cooper responded the permit was applied for in September but has not been issued.

Commissioner Perry asked if all information requested by staff has been provided and if a response has been received.

Mr. Cooper replied no response has been received but he understands this is because of the enforcement issue.

Commissioner Perry asked why this has to be turned over to enforcement.

Mr. Mohammadi responded construction without a permit has been an issue with Four Seasons for quite some time. In September 2001, Four Seasons applied for a construction permit for the sewer line. Staff reviewed the application and comments were sent to Four Seasons with no response. On February 25 construction without a permit was observed which is in violation of the Settlement Agreement with Four Seasons.

Commissioner Perry asked if a penalty is at issue.

Mr. Mohammadi replied Four Seasons recognizes they are liable for the penalty since they constructed without a permit and violated the terms of the Settlement Agreement. Four Seasons is questioning if they are in violation of the subdivision regulation.

Commissioner Perry asked if an impasse has been reached in resolving this issue.

Mr. Cooper responded the matter was brought to the commission rather than discussed with them.

Mr. Mohammadi stated there are three parties involved and the department cannot settle a case on behalf of the Attorney General's Office.

Commissioner Perry asked if that is the reason for the referral request.

Mr. Mohammadi responded that is correct. and noted he does not anticipate any problems with the parties reaching an agreement.

Commissioner Perry asked if this violation is holding up the permit and preventing them from continuing with the project.

Mr. Mohammadi replied it is not the policy of the program to delay issuance of a permit because of outstanding monetary issues.

Commissioner Perry moved to **refer Four Seasons Lakesites Punta Piloto Development to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Minton and unanimously passed.

Commissioner Perry noted it does not look good that Four Seasons responded to comments in February and it's now May and the department has not yet responded.

McClintock Sewer Repair

Mr. Mohammadi reported that McClintock Sewer Repair is a septic tank hauler that provides wastewater/sludge removal for septic tanks and small wastewater treatment facilities. A General Permit issued by the department authorizes McClintock Sewer Repair to land apply wastewater or sludge onto agricultural land or dispose of the material at a permitted wastewater treatment facility with the capacity to accept the load.

In October 2001, the Southeast Regional Office received a complaint that McClintock Sewer Repair was dumping sewer wastes onto the ground. Regional office staff investigated the complaint on November 29, 2001, and observed Missouri State Operating Permit violations that include failure to adhere to set back distances and failure to uniformly spread domestic wastewater. Regional office staff attempted on three occasions to send a letter of warning to the owner but the letters were not accepted.

On January 24, 2002, regional office staff investigated additional complaints received on January 4, and January 23, 2002, and observed McClintock Sewer Repair batch dumping sludge onto saturated ground. Photographs document a tanker truck owned by the owner pumping sludge onto the ground less than 25 feet from the roadside. Photographs also document the sludge ponding on the surface, mixing with rainwater, and flowing down gradient. Regional office staff ordered the driver to cease discharging immediately.

In February 2002, the regional office issued a Notice of Violation to the owner for violations of the Missouri Clean Water Law. The owner did not accept the Notice of Violation. The St. Francois County Sheriffs Department also made attempts to deliver the Notice of Violation to the owner but was unsuccessful.

Mr. Mohammadi recommended referral of this matter to the Attorney General's Office.

No one was present representing McClintock Sewer Repair.

Commissioner Greene moved to **refer McClintock Sewer Repair to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Kelly and unanimously passed.

Suburban Hills Estates Mobile Home Park

Mr. Mohammadi informed the commission Suburban Hills Estates Mobile Home Park in Andrew County contains approximately thirty-seven mobile homes connected to an unpermitted two-cell wastewater treatment lagoon.

In response to a public complaint, department staff inspected the wastewater treatment lagoon serving Suburban Hills Estates on July 17, 2001. Upon inspection it was discovered that the lagoon was being operated and was discharging without a Missouri State Operating Permit and it was not being properly maintained. On August 10, 2001 the department's Kansas City Regional Office sent the owner a certified letter explaining the violations and describing the steps that needed to be taken to bring the facility into compliance with the Missouri Clean Water Law. On September 5, 2001 the letter was returned to the regional office marked unclaimed. Department staff re-sent the letter and it was again returned unclaimed on October 22, 2001. In November 2001 the Andrew County Sheriff's Department served the letter to the owner. After being served, the owner made no attempt to respond to the department, and the regional office requested enforcement action. After several unsuccessful attempts to contact the owner by telephone, the Water Pollution Control Program's Enforcement Section prepared a letter to the owner describing the violations and what steps would need to be taken to bring the facility into compliance. This letter was served to the owner by the Andrew County Sheriff's Department on February 6, 2002. As of this date, the owner has failed to contact the department regarding the violations of the Missouri Clean Water Law and regulations at his mobile home park.

Mr. Mohammadi requested referral of this matter to the Office of the Attorney General.

No one was present representing Suburban Hills Estates Mobile Home Park.

Commissioner Perry moved to **refer Suburban Hills Estates Mobile Home Park to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Greene and unanimously passed.

Timber Ridge Subdivision

Timber Ridge Subdivision in Johnson County is owned by Mr. Albert Rampone. Mr. Mohammadi explained the five homes in the subdivision are not owned by Mr. Rampone, however, the unpermitted lagoons serving these homes are located on property owned by him. The receiving stream for the discharge from these lagoons is an unnamed tributary of the Clear Fork, a class P stream.

On March 23, 2000, department staff conducted a complaint investigation and observed wastewater seeping from the ground down hill of an unpermitted lagoon serving the subdivision. In May 2000, the department sent a letter to Mr. Rampone requesting a written response stating the steps and time frames he intended to take to eliminate the violations. Mr. Rampone's response explained that the lagoon was not leaking but that a sewer line feeding the lagoon was leaking and that he planned to fix the leak on May 27, 2000.

On September 19, 2000, department staff met with Mr. Rampone to discuss options to bring the lagoon into compliance. During this visit, department staff observed and photographed a

hole that had been excavated to access the sewer line, however, the line had not been repaired and the hole was partially full of wastewater. In October 2000, the department sent a letter to Mr. Rampone outlining the options previously discussed and requesting a written response. No written response was received.

On August 29, 2001, department staff conducted a complaint investigation and again observed the hole that had been previously excavated to access the sewer line. The hole had been converted to a lagoon and was very near discharging. In September 2001, the department issued a Notice of Violation to Mr. Rampone for construction without a permit, operating a wastewater lagoon without a Missouri State Operating Permit, and placing a water contaminant source in a location where it is reasonably certain to cause pollution. This letter requested a written response. Mr. Rampone responded that he intended to build a new lagoon. In November 2001, the department responded with a letter to Mr. Rampone explaining permit requirements to construct, operate, and close a wastewater lagoon.

The department sent three letters offering to settle the violations through an out-of-court settlement. On March 28, 2002, staff telephoned Mr. Rampone in a fourth attempt to resolve the violations through an out-of-court settlement. Mr. Rampone stated that he would not make an offer to the proposed penalties.

Mr. Mohammadi recommended referral of this matter to the Attorney General's Office for appropriate legal action.

Responding to Commissioner Perry's question, Mr. Mohammadi responded staff is not aware of the lagoon being built.

No one was present representing Timber Ridge Subdivision.

Commissioner Greene moved to **refer Timber Ridge Subdivision to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Kelly and unanimously passed.

Voss Truck Port

Mr. Mohammadi reported the Voss Truck Port is a gas station and convenience store located in Cuba Missouri. Sanitary sewer is connected to the City of Cuba's wastewater treatment plant. The facility has eight underground storage tanks (UST) and one aboveground storage tank (AST).

On March 4, 2001, Environmental Emergency Response was notified of a diesel fuel spill at the truck port. The spill was apparently due to a delivery driver leaving a valve open. The open valve allowed the AST to overfill a UST, which in turn, released fuel onto the parking

lot and into the ground. The spill occurred for approximately two hours before Voss employees discovered it, and this is believed to be because the employees had turned off the audible alarm inside the building. Voss employees observed a petroleum sheen on Pleasant Valley Creek late on March 5, 2001, which was communicated to the department by Missouri Department of Conservation (MDC) staff on March 6, 2001.

On March 6, 2001, department staff inspected the site and estimated the release at 5,000 to 7,000 gallons. MDC staff also confirmed a fish kill in Pleasant Valley Creek on March 6, 2001. The total number of organisms killed was 216, with a value of \$48.38. By March 7, 2001, the fuel spill on Pleasant Valley Creek had been contained. Samples collected on March 9, 2001 verified no residual contamination of the stream. An extensive site characterization is under way to determine the extent of soil contamination. Voss has received a permit to land farm the contaminated soil on site.

In addition to the diesel spill, a sewage bypass was discovered coming from lines owned by Voss. The City of Cuba responded, and in the process of clearing the blocked line, the city discovered that the blockage occurred in Voss' wastewater lines. The city repaired the connection even though Voss owned the line and pumped and disposed of approximately 7,000 gallons of sewage that made it to the tributary.

The Voss Truck Port is in violation of the Missouri Clean Water Law for discharging without a permit, violating water quality standards, and causing pollution of waters of the state.

Mr. Mohammadi recommended referral of the matter to the Attorney General's Office.

No one was present representing Voss Truck Port.

Commissioner Minton moved to **refer Voss Truck Port to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Kelly and unanimously passed.

Commissioner Perry reiterated that for events where there is an ongoing pollution event she believes there needs to be a process for referring the matters more quickly.

Mr. Totten stated due process is allowed to occur when the commission makes the referral. The other process within the department is where the department director can directly refer to the Attorney General's Office which can be faster than waiting for the next commission meeting where the commission can allow the responsible party opportunity to address the commission. Mr. Totten informed the commission he has asked Mr. Mohammadi to develop criteria for those cases the commission wants a direct referral on. Sometimes there are not ongoing problems and staff has requested the matters be referred by the director's office because the next commission meeting is not upcoming. Mr. Totten noted he believes it is important for the parties to have the opportunity to explain their side of the issue.

Commissioner Perry noted one of the referrals involves serving by a sheriff last October and three commission meetings have occurred since that time which is her concern. She stated she is trying to encourage a process by which those cases are recognized and brought to the commission faster.

Mr. Totten stated he understands the referral process needs to be speeded up and Mr. Hull will be working on this issue.

Staff Reports

State Revolving Fund Update

Carrie Schulte, Water Pollution Control Program Financial Services Section, reported EPA completed its review of the state fiscal year 2000 audit report last summer. The outcome of this audit was the agency's State Revolving Fund (SRF) accounting system needed substantial evolution and withdrawals from the fund to accommodate Article X (Hancock Amendment) of the Constitution were not allowable. The Office of Inspector General (OIG) reported that the state's accounting system does not adequately account for fund activity and the subsidiary systems do not adequately provide proper reporting of fund activity. Because of the Hancock Amendment, Missouri has and will continue to transfer SRF funds to the state's general fund. The funds are immediately replenished. The OIG says that replacing Article X funds should be viewed as an interim measure and recommended the state take necessary steps to exclude the SRF funds from future Article X calculations. Ms. Schulte stated due to these two findings, EPA required DNR to develop a Corrective Action Plan (CAP). EPA requires monthly updates of the plan be provided to them indicating level of effort toward completion of the milestones. DNR has provided updates since October 2001.

On March 15, 2002, EPA advised that they were freezing payments from the capitalization grants until more substantial progress could be made. The clean water SRF had already depleted prior capitalization grants and currently has sufficient funds in its repayment account for all prior commitments and future commitments through April 15, 2003. The drinking water SRF carries a balance in earlier capitalization grants. With these funds and their repayment account, the drinking water SRF can meet prior and future commitments through fall 2002. Ms. Schulte explained this is somewhat different from what was originally explained due to a misunderstanding of what funds were frozen. Staff originally believed earlier capitalization grants were being frozen but only the 2000 capitalization grant was frozen.

Ms. Schulte explained both drinking water and clean water commissions approved the transfer authority and have incorporated transfer language in their respective Intended Use Plans as required by EPA. In the interim, staff are doubling their efforts to provide EPA with all of the information they need to see that staff is meeting and exceeding the milestones

contained in the CAP. Unless extended, by federal regulations, September 30, 2002 is the sunset date for transfers between the two SRF funds. It is expected that EPA will ask Congress to drop the sunset date.

Conversations with EPA have indicated that if the March CAP report shows significant progress, the freeze will be lifted. Ms. Schulte reported the March report has been submitted and staff believes the CAP reports have not conveyed progress that has been made due to the past format of the report. With EPA concurrence, staff has added much more detail to the March report. Staff is confident that past and current efforts will enable EPA to release the funds.

Ms. Schulte informed the commission one of the major milestones in the CAP is to secure a new SRF accounting system. Over the past several months, a detailed workplan for a new accounting system has been developed. On April 22, staff presented their progress to EPA and they reported that based on the meeting they had no problem recommending to their superiors that the freeze be lifted. DNR expects a response from EPA around May 6.

Ms. Schulte stated two events have a significant influence on staff's success. Over the past several years, funds have been withdrawn from the SRF accounts for Article X refunds and immediately replaced. EPA has historically held the position that the removal is not a permitted use of the fund. The dialogue over this issue has become more focused. Another withdrawal and immediate replenishment is scheduled for the spring of 2003. Ms. Schulte reported it is understood that there is verbal agreement between the department's director and EPA Region VII that the department would sponsor legislation next year to exempt SRF funds. The second event is HB 1101, which has been passed by the Missouri House but rejected by the Senate Budget Committee. This bill would transfer \$19 million from the clean water repayment account to pay principal and/or interest on Water Pollution Control Bonds, which are used, in part, for the SRF match. EPA has indicated that Missouri's SRF program structure does not meet the criteria for such transfers. If the process continues and funds are withdrawn, another CAP along with a Notice of Violation will be forthcoming.

Mr. Totten reported the repayment account has approximately \$177 million and almost all of that is repaid loans for construction of wastewater facilities. There is a small amount of repayment in the account from storm water loans that have been issued by the state in the last several years. An eligible expenditure under the Clean Water Act for that repayment account is retiring principal and interest on state bonds used as match for the SRF provided it is set up that way to begin with, it is a segregated fund to begin with and it is allocated as an intended use in the Intended Use Plan. None of those criteria have been met in this instance. In order to help balance the state's budget, there has been a move to use \$19 million from the repayment account to pay off the interest due on all state bonds used for water, storm water, rural water and sewer projects, and the forty percent grant program that are due as interest payments next year. These bonds were sold from 1991 through last fall's sale. The House Budget Committee placed this in House Bill 1, which is state debt. The Senate Budget

Committee did not approve this but, in conference Monday, the Conference Committee agreed to using the \$19 million. Of the \$19 million interest due next year, only \$4.5 million of that is due to actual SRF bond sales. The remainder is storm water, rural water and sewer and forty percent grants. EPA is ready to react should this be approved and used for this purpose. The House Budget Conference Committee had not signed the bill as of yesterday. Mr. Totten stated staff is working on the spring closing. Some of the drinking water projects were potentially in jeopardy of not being able to go forward with this closing. The transfer allows for the safety net needed to go ahead with this closing. It is questionable whether staff will be able to go forward with the next fall and spring closings.

Responding to Commissioner Perry's question, Mr. Totten stated EPA was not seeing significant progress, which was a communication problem between staff and EPA. This has since been clarified during last Monday's meeting. The \$19 million is in the repayment account and it would not technically be a violation until such time as the state actually took that \$19 million and spent it on interest payments, which probably wouldn't be until early 2003.

Commissioner Perry asked if the \$177 million has been committed to the Intended Use Plan.

Mr. Totten noted that is correct and there are also projects on the contingency list. If EPA finds the state in violation, they can take the program away which puts a cloud over future bond sales.

Commissioner Perry asked if there was a possibility of using those funds for that purpose if the proper language had been included.

Mr. Totten acknowledged it is possible. The Constitution requires that bonds sold for storm water, rural water and sewer, forty percent grant program, drinking water and clean water loans all go into the Water and Wastewater Revolving Loan Fund which is a separate account from the SRF fund. If this was set up, \$4.6 million out of the fund could legitimately be used next year to pay off the SRF component. The other \$15 million from the SRF repayment can't be used to retire the state's obligations on the storm water program, which is a state program under the SRF.

Commissioner Perry asked if staff has met with legislators explaining the problem they're about to create.

Mr. Totten replied they are looking at a \$900 million problem and this is only \$19 million. He noted there have been numerous organizations and entities discussing the issue with their legislators.

Ms. Schulte stated the state fiscal year 2001 Annual Report was submitted late to EPA on April 12, 2002 due to turnover of key staff and the required learning curve of less experienced staff. Through this report staff has continued their efforts to coordinate with EPA Region VII and the EPA OIG Office to reconcile the state fiscal year 2001 trial balances. The report was submitted two weeks after resolution of those financials.

401 Water Quality Certification Checklist

Ms. Shannon reported the Clean Water Act sets up a system whereby the state issues a water quality certification for any federal permits. In the case of 404 permits, the state issues a 401 certification. The department was asked to develop a checklist of items that need to be included for a complete 401 certification application. Ms. Shannon stated the checklist was provided at the March commission meeting. Information regarding mitigation plans has been added as item 17 as requested at the March commission meeting. Ms. Shannon requested commission approval of the checklist.

Commissioner Perry asked why full names and addresses of all adjoining property owners is required.

Ms. Shannon replied this is a requirement of the 404 application. Typically with 404 applications, neighboring properties are notified of a pending action.

Commissioner Minton asked where this checklist will be made available to the public.

Ms. Shannon reported she anticipates adding it to the department's web site but also through the department's Outreach and Assistance Office, and stakeholders that staff typically deal with. She noted staff could ask the Corps to provide the checklist on a routine basis.

Commissioner Minton noted many of the Corps districts would be able to ensure applicants have a 401 checklist. He commented that it is a good checklist.

Commissioner Perry asked if there is also an application form for 401 certification.

Ms. Shannon responded there is not. Because the 404 application is the same as the 401 certification application, staff thought it would be confusing to have a form for Missouri, particularly because there are five different Corps districts to deal with.

Commissioner Perry noted the most likely place to hand the checklist out is with the 404 application.

Commissioner Minton moved **to accept the 401 water quality certification checklist as submitted by staff**; seconded by Commissioner Kelly and unanimously approved.

Update on Permitting Efficiencies

Mr. Schroeder reported this is the third presentation of a regular series of reports the commission has asked for on how the department is trying to improve its methods and procedures for the review and issuance of wastewater permits through the Water Pollution Control Program. The next presentation is planned for the August commission meeting. Staff is planning on presenting a three-part report. The first part will be about the status of the reduction of the backlog of permits; the second part will discuss what permitting efficiencies are being made in the program to help improve the timeliness in the review and issuance of permits; and the third part will be a comparison of performance of the review and issuance of permits with the statutory obligations that came about in 2001 when statutory timelines for the review and issuance of permits were imposed on the department. The information will come from the Permit Action Management System which staff is still trying to perfect.

Mr. Schroeder reported the backlog has been reduced by 23% which puts staff 49 permits away from EPA's overall goal of having only 10% of the total permits expired. EPA is also watching how staff is performing with specific permits on major facilities and significant minor industrial discharges. There are about 143 of these facilities in the state and of those about 34 are backlogged. The department has a goal of 2% which will be more difficult to achieve but staff will move toward that goal.

Mr. Schroeder stated staff is working toward full implementation of a number of methodologies staff believes will improve the overall timeliness of their work, particularly with the complex permits. Much progress that has been made in backlog reduction is due to the resources that have been added to this effort, not so much due to the change in the processes that are anticipated.

There has been a steady increase in the number of operating permits being processed on a biweekly basis since November 2000 increasing production by about 200%. Over 300 permits have been issued in a period of two weeks. Mr. Schroeder noted this effort is mostly due to hiring consultants to help with this effort and staff adjusting to the rapid pace and changing some of their procedures.

Staff plans to track 12 permit actions for timeliness. For each of the 12 actions, there are six interim steps that have to be completed for a permit application. Staff will track these steps to determine if they are on track to meet statutory timelines. Mr. Schroeder explained the column titled Maximum Total Days In DNR is the days staff believes they can achieve once all of the permit efficiency efforts are in place and working smoothly. He stated in some cases those days are much less than what the statute is obligating staff to do. Mr. Schroeder continued these might be areas to look at in the future to reduce timelines.

Mr. Schroeder explained examples of information that will be brought to the commission showing how long it is taking staff to process the entire permit.

Commissioner Greene asked if this is from the day the application is completed.

Mr. Schroeder explained there is inconsistency in the way staff is entering information into the Permit Action Management System and it is difficult to answer that question. This is one of the reasons the data is not yet accurate. It has been explained to data entry staff that the statute says staff has 180 days after an application is deemed complete to accomplish the review.

Chairman Herrmann asked if the clock goes back to zero if the application is deemed incomplete.

Mr. Schroeder replied staff is doing a completeness check within seven days. If an application is deemed incomplete, the application goes back to the applicant, therefore, there is no clock running. The clock restarts back to day one when the application is received for a second time by the department.

Mr. Schroeder explained an example of the length of time for technical review of construction permits with a site-specific operating permit. A technical review of that type permit should be completed within 60 days. Staff will focus on the eight permits that did not meet the internal timeline.

Commissioner Perry noted the backlog on permits that have expired has gone down and biweekly reporting has gone up considerably. She asked if this is a cyclical issue or a response to something within the department.

Mr. Schroeder responded there are many variables that affect staff's ability to bring the line down. The backlog reduction chart does not track construction permits because staff typically does not need to renew a construction permit so they never actually end up on a backlog.

Commissioner Perry asked if the backlog of operating permits includes all that have been reapplied for.

Mr. Schroeder replied staff's policy is to keep all permits on record, even if they are expired, until the permit holder notifies staff they want the permit terminated. One of the permit efficiency recommendations that has already been implemented is for land disturbance permits which generally don't need to be renewed to automatically terminate. If the permit holder wants the permit renewed, they must contact the department otherwise the permit will automatically terminate and they will be operating without a permit if discharge is still occurring after the five year period.

Mr. Schroeder stated he plans to present more information at the August meeting that reflects true efforts.

Chairman Herrmann noted this report is what the commission was looking for and will look forward to the next report.

LEGAL MATTERS

Motion to Stay Permit Appeals 339 and 364

Debbie Neff, Commission Counsel, reported the Motion for Stay of Permit Conditions regarding commission appeals 339 and 364 has been withdrawn.

Commission Action on Appeal 368 Exide Technologies Request for Stay

Ms. Neff reported Exide Technologies permit was amended to contain a selenium effluent limitation, which was appealed. A stay has been requested on that limitation until the appeal is concluded. All other terms of the permit are in full force and effect. Counsel for parties met and agreed to this and have requested the commission's approval of the stay pending appeal.

Commissioner Perry moved to **approve the Stipulation and Agreement for Stay Pending Appeal in Clean Water Commission Appeal 368 Exide Technologies**; seconded by Commissioner Greene and unanimously passed.

ADMINISTRATIVE MATTERS

Chip Mills/Intensive Timber Harvesting

Becky Shannon, Acting Chief of the Water Pollution Control Program Planning Section, reported staff of the department met with the Department of Conservation to discuss opportunities for working together to achieve their respective missions. Plans are to hold another meeting involving additional program staff to further define how the departments can work together over the coming months. Ms. Shannon continued one monitoring site has been set up in Gasconade County to quantify some of the impacts of what appears to be an improperly managed harvest.

Mr. Mahfood noted how strongly the department feels about its approach to nonpoint source issues. The department has not been able to do everything it has wanted or that the commission has wanted the department to do. The issues surrounding timber harvesting and management in Missouri have a long history and the department needs to look at this issue in the context of nonpoint source issues. Mr. Mahfood stated the department needs to move in

the direction of education, information, incentives and regulation. All of those pieces need to be in place and they all need to inter-relate. Mr. Mahfood stated he has asked Scott Totten as the director of the Water Protection and Soil Conservation Division (WPSCD) to integrate a lot more closely what the Safe Drinking Water Commission, Clean Water Commission and Soil and Water Districts Commission do. Money is available from the Soil and Water Districts Commission and this commission should be complementing what the Clean Water Commission does. There are source water protection issues and funds through the Safe Drinking Water Commission. Mr. Mahfood noted his expectations of the WPSCD and the Water Pollution Control Program is that these programs work much more closely together so issues brought to the commission have been discussed in much more detail with more integration between the commissions. Mr. Mahfood asked for the commission's support and pledged this will be done in a very common sense, understood manner. He continued that the education, information, incentives, working together of the commissions and the regulation are all needed. The regulation is what is most disputed and the department has to have boundaries. Developing a regulation properly and within the context of the whole nonpoint source program will give the agency a much better idea of its priorities. Mr. Mahfood noted work is currently being done under current authority but it's not done in a way that helps the situation.

Commissioner Perry noted she is very much concerned about the regulation because she does not understand that the Clean Water Commission has statutory authority to regulate timber harvest. She noted timber harvest, not the chip mill industry in the state, is causing erosion. She stated she agrees that we all need to work together but she is very concerned about having a regulation before there is statutory authority.

Mr. Mahfood stated this goes back to the Chip Mill Advisory Committee and the fact that when the group began looking at the chip mill situation the group immediately moved into timber harvesting practices. It was strongly acknowledged in those discussions that the Department of Natural Resources (DNR) is not involved with regulating timber harvesting. DNR's responsibility is water quality and that's where the current focus is. The department is in the middle of some situations trying to deal with the aftermath of poor timber harvest practices on water quality. Mr. Mahfood stated DNR has to be able to address these situations.

Commissioner Perry stated she wholeheartedly agrees that issues need to be addressed but her concern is that the people to whom lumber is sold should not be held responsible.

Mr. Mahfood replied there is a wide variance of opinion outside the department about how to get at this issue. That is why staff believes the commission needs to provide direction to the department on how to proceed. Mr. Mahfood stated the questions that need answering are how does the department get at protecting water quality, what goes along with the cooperative side and the incentive side that provides the kind of basis that the department currently has without expanding responsibility to protect water quality. He stated that the

department has a water quality responsibility and he would like to see that come full circle and be able to address it so the education, information, incentives and regulation are integrated rather than being separate pieces. Mr. Mahfood asked the commission to lead the charge, with the staff's assistance, to get the pieces put together in a way that will work.

Chairman Herrmann noted he had asked at a previous meeting if the owner of the property and/or the person doing the cutting on their behalf could be held liable if it can be demonstrated that someone adversely affected streams by improper timber harvesting operations and the answer was yes. Chairman Herrmann stated he recognizes that this is after the fact and also places a burden of proving our case but there are consequences to someone not following what the department would attempt to tell them through the education process. That's not impinging on anyone's rights of property ownership.

Mr. Mahfood responded how this gets done and how the department reaches out is the difficult part. As of several years ago, the numbers of people that were being reached were in the 10-20 percent range. It's not as high as the department wants, even with good Forest Products Association and Department of Conservation programs. The department is not happy with the number of people that get the information and get educated about how to do their business so that it's protective of water quality. Mr. Mahfood stated he is searching for answers on what is it that the department needs to do to reach people so they get the right information. The Chip Mill Advisory Committee heard it's anywhere from mandatory to totally voluntary. Mr. Mahfood stated there has to be something in between where the department is aggressive in what is done and it does not have to be regulation. The water quality issues are not going to go away and they have to be addressed.

Commissioner Perry asked if the formation of some sort of committee to address this issue is foreseen.

Mr. Mahfood responded he believes this will occur but a proposal has not yet been formulated.

Chairman Herrmann noted, in addition to the Forest Products Association, there are loggers groups that the forestry people are familiar with which would appear to be one of the main targets of an educational program. The Department of Conservation should be a prime source of identifying those groups.

Mr. Mahfood replied the Conservation Commission and staff, the Forest Products Association and others must get involved with DNR in this process to make it a collaborative effort. DNR is currently dealing with problems after the fact and needs help in dealing with them before they become problems.

Commissioner Kelly stated it seems very reasonable for the Clean Water Commission to look into what can be done in the way of a regulation realizing the commission doesn't have the

same responsibility as the Department of Conservation. She noted the Clean Water Commission does need to get involved in the area of regulation because the commission knows incorrect harvesting of timber is affecting waters of the state. The commission needs to look at all avenues of what can be done.

Commissioner Perry asked if this couldn't be an extension of the Governor's Chip Mill Advisory Committee; the recommendations of that committee need to be implemented.

Mr. Mahfood stated the information in that report is extremely important and salient because there were recommendations made in this report even about regulation in the context of all the members of the committee. Things were agreed to that have not been vetted even here. He noted there are things that could be accepted, rejected, or modified. He recommended taking the report and recommendations and identifying what is related to water quality. Many of the recommendations directly relate to the mission of the Clean Water Commission. Mr. Mahfood suggested having a task force reporting back to the Clean Water Commission. He asked that the Clean Water Commission take the leadership role with the Department of Conservation and others involved in the process.

Commissioner Minton noted there has never been an enforcement case against anyone for damages done to the waters of the state because of a timber harvest practice. He noted that is a detriment to a deterrent that is at the commission's disposal. If the department does what they have the jurisdiction to do, then other things might become a lot easier. Focusing on the timber industry also focuses attention on nonpoint source pollution. Commissioner Minton noted the commission directed staff to provide funding for nonpoint source. This did not happen primarily because there is no way to focus and target that money. If a regulation is developed, Commissioner Minton asked that it be broad in scope and target the entire nonpoint source problems that prevail in Missouri. He continued with broad-based support, the commission will not have to worry about overregulating any particular group. Commissioner Minton noted he understood a regulation might involve public awareness that there are financial incentives and education available if there is participation in a best management practice. He stated if the department is willing to educate and support the general public, there shouldn't be a problem in selling a regulation that will assist the public. If a regulation says a permit is required to harvest timber over a certain acreage then there will be a battle that won't affect attitude and the only way that the forests of the state will be preserved is with attitude. Commissioner Minton stated the Governor's Advisor Committee report fell on deaf ears. He stated every practical provision of that report should be implemented before the process of promulgating rules is begun. The process of defining what will be done in a rulemaking process should be done but there are so many other opportunities available. Money and staff are available through various agencies to protect resources it's just a matter of determining how to target it. Commissioner Minton noted this issue is one of significance and noted he appreciates Mr. Mahfood's presence and he knows that he understands the commission is here to protect the waters of the state via the mechanisms where they feel they have the jurisdiction. He stated he believes the

commission will support the department in any aspect so long as the jurisdiction is there. Commissioner Minton noted he has heard comments from many people that have real concerns about the direction that will be taken as an agency regarding promulgation and the focus of a regulation will be. He stated what was conveyed from Mr. Mahfood today has never really been conveyed from staff. There has been a narrow focus and limited amount of information presented to the commission. Commissioner Minton added that assurance needs to be given that everyone that is affected have the opportunity to be involved.

Mr. Mahfood noted he appreciates those comments and that is why he believes the commission has an understanding of what is going on. Citizen leadership is needed in how this moves forward. Conservation Commission members also see a responsibility on their part to reflect DNR's needs. They understand that they have other protections that are fostered by protecting a second growth forest in southern Missouri such as tourism. Recreation and tourism are very key for Missouri and transcend even water quality and timber management. Mr. Mahfood stated all of these things are really subparts of the bigger economy for the state. The Conservation Commission members are recognizing that there are some things that may be different than they've been in the past and we need to recognize that same thing; regulation is not always the answer. It's just an adjunct to the program that is laid out. Mr. Mahfood commented if the agencies at the highest levels work together on this issue, everyone will be surprised at what can be done.

Commissioner Perry noted the Advisory Committee Report has set for 18 months without action.

Mr. Mahfood stated there are very defined legal responsibilities within the Clean Water Commission and the Conservation Commission. The Chip Mill Advisory Committee did not have to do anything. Because of the diversity of the people that were on the committee, some of the recommendations were pasteurized and some were very pointed. Mr. Mahfood noted he is not asking for another study but rather an answer to how do we move forward to implement things to make this situation better. The major issues are contained in the advisory committee report. DNR now has its water programs under one leadership and better integration can now occur in these programs. Cooperation and utilization of each others resources has to occur within the programs. Mr. Mahfood noted he expects to have a better-defined template by the June 26 commission meeting and will have talked to the commission about how to move forward.

Commissioner Minton asked what sort of timeline is being considered to achieve an outline and begin implementation of the vision.

Mr. Mahfood replied he would like to have the design and be moving forward by the end of this year. He continued that this does not mean that rules would be in place by that time but he would like to see an intensive effort in the next six months. If some regulatory or legislative package is needed, then the opportunity for the next legislative session exists.

Commissioner Minton noted time is of the essence.

Mr. Mahfood replied there is no good answer to the delay but the issue needs to be speeded up. He noted two Conservation Commission members have asked to speak to the Clean Water Commission about this issue and he wants to talk about the cooperation, hopefully this summer. Mr. Mahfood noted he wants to get them on board and reassure them that DNR is not stepping into their arena. He continued that what they do also ties back in if there can be an agreed upon approach that we are doing this in concert with each other. Mr. Mahfood noted this doesn't mean that everyone agrees on everything but, that at the highest levels, there is some communication about this issue.

Chairman Herrmann noted an important point to get across to them is that this is to benefit both commissions.

Commissioner Perry asked about a joint educational seminar similar to the commissioner's conference, possibly a two-hour session on the program including possible approaches.

Mr. Mahfood replied he felt this could happen at some point. He continued the director elect of the Department of Conservation understands the technical, environmental and political aspects of this issue. Mr. Mahfood noted several of the Conservation Commission members know that the commissions have to act in concert.

Other

Budget

Mr. Mahfood updated the commission on legislative matters. Conference Committee members have been assigned to House Bills 1 and 2 with DNR being in House Bill 6. House Bill 1 contained the provision for withdrawal of \$19 million out of the State Revolving Fund repayment fund. Mr. Mahfood stated that even though this is illegal and has unknown consequences, the legislature is going forward with taking the \$19 million out of the repayment fund. Representative Bill Ransdall, with the department's help, is developing a letter to all of the House and Senate members outlining the impacts that the actions of the Conference Committee could have on Missouri's communities and its environment. Mr. Mahfood noted any support that can be given to Representative Ransdall for the support he has given the commission and the department would be appreciated. The \$19 million was taken out under the budget proposals for the Office of Administration. Mr. Mahfood continued there has been flexibility in the past throughout the department to move money between personal services and expense and equipment giving managers the ability to manage. The department is pushing hard to restore the flexibility it had prior to the budget crisis. When there are limited budgets, the one way to deal with it is to have some flexibility to manage very difficult situations. As reorganization of the department is completed, there are always rough edges that this flexibility would help deal with.

Environmental Hearing Commission

Mr. Mahfood reported on the bill proposed to create an Environmental Hearing Commission and taking the authority to hear appeals away from the department's commissions. An amendment has been proposed to take the hearing capability away from the commissions and give it to the Administrative Hearing Commission. The parties interested in the Environmental Hearing Commission have given up on that concept. The present proposal is that an additional commissioner to deal with environmental issues will be hired and the Administrative Hearing Commission will hear appeals with no connection back to the boards and commissions in the department. The decision of the Administrative Hearing Commission would be final under the proposed amendment. Mr. Mahfood noted with his feelings about the role of citizen commissions in the department, he is totally against this. He feels it's wrong and totally defeats the purpose of the commissions. Most of the legislators think that the department's commissions issue the permits so they feel this is a conflict of interest. Mr. Mahfood stated he has worked hard to explain that the department's issue the permits and the rulemakers have the responsibility to make sure what the department did fits what is established in the rules but a lot of misinformation has been passed around.

Chairman Herrmann stated information provided by the main proponent of the bill said that the commissions become judge, jury and executioner regarding appeals. In testifying before the House and Senate Committees, Chairman Herrmann stated that the department's commissions know the background and this will take the judgment away from the commission and give it to an attorney with no background in the issues.

Mr. Hull asked if third party appeals is involved in this.

Mr. Mahfood said it was at one time but he was not sure of the current status.

Responding to Commissioner Perry's question, Mr. Mahfood discussed the Administrative Hearing Commission bill.

Staff Reports

Enforcement Status

Mr. Mohammadi updated the commission on several enforcement matters.

Commissioner Perry asked about the Ted Williams Steakhouse timeline.

Mr. Mohammadi responded that the compliance part of the issue has been moving along. There is no on-going pollution problem but rather it is a matter of getting the entity to transfer a piece of land to a homeowners association for the purpose of land application.

Responding to Commissioner Perry's question, Mr. Mohammadi said with Woodbridge Subdivision an operating permit could not be issued to the developer because he was not an approved continuing authority and had to turn everything over to a homeowners association who did not have bylaws in place. There is no on-going pollution problem.

Chairman Herrmann asked about Fountain 'n Lakes.

Mr. Mohammadi replied the grant was approved for the community and staff is monitoring until final resolution.

Responding to Commissioner Perry's question regarding Johnson County Egg Farm, Mr. Mohammadi noted a permit was recently issued and this case will be removed from the report.

Adoption of December 28, 2001 Conference Call Minutes

Commissioner Greene moved to **adopt the minutes of the December 28, 2001 conference call as submitted by staff**; seconded by Commissioner Kelly and passed with Commissioner Perry abstaining.

Adoption of January 9, 2002 Commission Meeting Minutes

Commissioner Kelly moved to **adopt the minutes of the January 9, 2002 meeting as submitted by staff**; seconded by Commissioner Perry and passed with Commissioners Greene and Minton abstaining.

Adoption of February 13, 2002 Commission Meeting Minutes

Commissioner Greene moved to **adopt the minutes of the February 13, 2002 meeting as submitted by staff**; seconded by Commissioner Kelly and passed with Commissioner Perry abstaining.

Adoption of March 19, 2002 Commission Meeting Minutes

Chairman Herrmann noted that the 4th paragraph, 5th line of page 24 where Mr. Ridenhour refers to the Department of Conservation needs to be changed to the Department of Natural Resources. Commissioner Minton asked that references to Commissioner Davis be changed to Commissioner Minton throughout the minutes.

Commissioner Greene moved to **adopt the minutes of the March 19, 2002 meeting as amended with the changes requested by Chairman Herrmann and Commissioner Minton**; seconded by Commissioner Kelly and unanimously passed.

Adoption of April 5, 2002 Conference Call Minutes

Commissioner Minton moved **to adopt the minutes of the April 5, 2002 conference call as submitted by staff**; seconded by Commissioner Perry and passed with Commissioner Kelly abstaining.

Other

Chairman Herrmann stated he was provided a note asking about the disposition of the study that was being done in the Lake Saint Louis watershed relating to package treatment plants.

Mr. Totten reported Lake Saint Louis has received a \$500,000 grant as a line item in EPA's budget to deal with a watershed study of Perdue Creek. He explained the area is highly urbanized in the upstream areas and there is no regional sewer system. Large subdivisions are putting in package plants in the interim. The St. Charles County Commission has established by local ordinance 10/15 limits for those package plants. They would be run under contract by Duckett Creek Sewer District until a regional system is available and they can be taken out of operation. They also put in ammonia limits of two and one-half and phosphorus limits of .5. The community is very concerned about proliferation of growth in that upper watershed with no regional system and want to be very protective of the area.

Chairman Herrmann asked who will administer the grant for the study.

Mr. Totten responded the grant comes from EPA's budget. A meeting was held at the end of March with all the stakeholders who discussed hiring a full time person to work on this watershed.

Chairman Herrmann stated this would have been taken care of if the commission had done what they wanted to do several years ago and made the streams in northern Jefferson and southern St. Charles Counties metropolitan no-discharge.

There being no further business to come before the commission, Chairman Herrmann adjourned the meeting at approximately 3:25 p.m. May 1, 2002.

Respectfully submitted,

Jim Hull
Director of Staff